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IN THE

Supreme Court of the United States

October Term, 1955

No. 971108

WILLIAM J. SALTER and SKY RANCHES SOCIETY, a Colorado Corporation,
Petitioners

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

WESLEY E. McDONALD
1025 Vermont Ave., N.W.
Washington, D. C.
CHARLES S. VIGIL
Ernest & Crammer Bldg.
Denver, Colorado
Counsel for Petitioner

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a Colorado Corporation,
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THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF JEFFERSON, STATE OF COLORADO
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States

William J. Salter and Sky Ranches Society, your petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Colorado entered in the above-entitled cause on January 23, 1956.

OPINIONS BELOW

Opinion of the District Court of Jefferson County, Colorado, entered December 21, 1953, in case of Board of County Commissioners, of the County of Jefferson, State of Colorado, et al. vs. William J. Salter, et. al. C. A. #5904. (Appendix A p. A 13) (Rec. p. 19).

Opinion of Supreme Court of the State of Colorado dated November 29, 1954, in case of William J. Salter,

et. al. vs. Board of County Commissioners of County of Jefferson, State of Colorado, et. al. No. 17395, reported at 277 P 2d 232. (Appendix A p. A 13).

Opinion of the Supreme Court of the State of Colorado dated January 23, 1956, in the case of William J. Salter, et. al. vs. Board of County Commissioners of County of Jefferson, State of Colorado, et. al. reported at 292 P 2d 345. (Appendix A p. A 13). (Rec. p. 22).

JURISDICTION

1. The judgment of the Supreme Court was entered on January 23, 1956; (Appendix B p. A 16) (Rec. p. 26) the Petition for Rehearing was denied on February 6, 1956, (Appendix B p. A 17) (Rec. p. 29) and an order extending the time for the filing of the petition for a writ of certiorari was granted April 19, 1956, extending the time to file to May 23, 1956. (Appendix B p. A 17).

2. The federal question was raised as indicated at Pages 7, 14 and 15 of the Brief of the Plaintiff in Error filed with the Supreme Court of the State of Colorado and the excerpts of this record are set forth in Appendix D p. A 19, and the Reply Brief of the Plaintiff in Error at Page 11, the pertinent excerpt of which is set forth in Appendix D p. A 20.

3. The judgment of the Supreme Court of the State of Colorado is final by its terms.

4. The jurisdiction of this court is invoked under the provisions of Title 28, U.S.C., Section 1257 (3), and the Constitution of the United States of America, Amendment 14, Section 1.

QUESTIONS PRESENTED

1. Did the District Court of Jefferson County, Colorado, have jurisdiction over the subject matter to render its judgment?

2. If the District Court did not have jurisdiction were petitioner's constitutional rights violated?

3. Did Petitioner voluntarily pay the judgment?

4. Can mere passage of time make a void judgment valid?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The state and federal statutes involved are set forth hereafter in Appendix C p. A 18.

Title 28, U.S.C., Section 1257 (3).

Constitution of the United States of America, 14th Amendment. Sec. 1, Colorado Revised Statute, Chap. 58, Sec. 4, Sub. sec. 4.

STATEMENT OF THE CASE

The Respondent, the Board of County Commissioners, filed a Complaint claiming possession of real property on May 19, 1947, against William J. Salter and Sky Ranches Society, Inc., alleging ownership and right to an immediate possession to land described by metes and bounds, located in Jefferson County, Colorado, covering approximately 40 acres and stating that defendants were in possession and wrongfully withholding possession, and praying for a restoration of possession to the plaintiff.

The two defendants filed separate answers, denying the allegations of the Complaint, and setting forth a Lease

by the plaintiff Commissioners on July 19, 1943, to William J. Salter, containing an Option to Purchase the land leased, and that Salter complied with the terms of the Lease and Option. The rights of the Intervenor, who entered into the matter on April 16, 1949, are not important to this appeal and have not been determined.

The Trial Court in ex parte proceedings entered a default decree and judgment against defendant Salter on May 8, 1950, which decree and judgment were set aside upon appeal to the Supreme Court of the State of Colorado in case No. 16636, 246 P 2d, 890, for the reason he had not been given the three-day notice as required by the state statute in a default proceeding.

Thereafter the case was tried and upon the conclusion of the evidence and judgment, the Court decided that the defendant Salter was entitled to equitable relief as to the Lease, but not as to the Option, since the Option could not lawfully be exercised and required defendant Salter to pay the balance due upon the Lease and assessed damages for wrongful possession. This judgment was entered December 21, 1953, and awarded the plaintiff $3,780.59 and possession of the real estate.

Subsequently this case was appealed to the Supreme Court of Colorado and in case No. 17395, 277 P 2d 232, the Supreme Court of Colorado affirmed the judgment.

On February 11, 1955, the petitioner William J. Salter filed a Motion to Dismiss and Vacate the Judgment in the District Court in and for the County of Jefferson, State of Colorado, and it is that proceeding that brought about the question now the subject matter of this proceeding. The Motion is based upon the contention that the action was one in forcible detainer under the laws of the State of Colorado, and that no statutory notice, as required by the laws of the State of Colorado, was served upon the defendants and the trial court, therefore, had

no jurisdiction over the defendants or the subject matter; the complaint failed to set forth any such notice; none was alleged and none was proved.

The Motion to Dismiss and Vacate Judgment set forth that Colorado Revised Statutes, Chap. 58, Section 4, Sub-Section 4, provided that a Lessee holding over after any default, shall be entitled to "three days notice in writing served upon the Lessee, requiring payment of the rent or possession of the premises." The lower court denied the Motion and entered judgment denying it, and in Case No. 17774, 282 P 2d 345, the Supreme Court of Colorado affirmed the Order and dismissed the Writ of Error. This case is the subject of this petition.

The Supreme Court of the State of Colorado states in its opinion 292 P 2d 345 that Salter paid the amount of the judgment and therefore cannot complain. However there is nothing in the record to show Salter ever paid the judgment, and therefore this point was not before the Court. Salter denies he ever paid willingly any moneys but that all the moneys he has ever paid have been paid under protest and his Affidavit submitted in his Brief so stated.

The fundamental question of fact is the question of whether or not the Court had jurisdiction, in view of the failure to give the three days' notice. If there was no jurisdiction, obviously all of the proceedings are null and void. It is the contention of the petitioners that there was no jurisdiction.

REASONS FOR GRANTING THE WRIT

1. Jurisdiction or the lack of it is a constitutional issue because the due process clause of the fourteenth amendment to the federal constitution requires that the court which assumes to determine the rights of parties shall have jurisdiction to hear and determine the dispute.

2. The Courts of the State of Colorado never acquired jurisdiction of the subject matter for the reason that a requisite to jurisdiction was the giving of a statutory notice which was never given the petitioner; therefore, the judgment of the Colorado courts compelling petitioner to surrender property and pay money judgment was thus unconstitutional.

3. The Supreme Court of the State of Colorado incorrectly found as a fact that the judgment was paid voluntarily, notwithstanding there was no evidence to support such a finding and this finding by the Colorado Court violated petitioner's constitutional rights; and the courts further incorrectly found, as a matter of law, that the mere passage of time would make a void judgment valid, which also violated the petitioner's constitutional rights.

PETITIONER WAS DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW, CONTRARY TO THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

A. Jurisdiction or the lack of it is a part of the due process clause of the 14th amendment of the Federal Constitution.

Petitioner claims the Supreme Court of the State of Colorado deprived him of his property without due process of law by its failure to grant a writ of error which would have provided for a review of the original judgment entered against the now petitioner. The judgment (App. B p. A 16) and the opinion (App. A p. A 13) of the Supreme Court of the State of Colorado nowhere mentions or considers the petitioner's constitutional rights even though the question was presented to them for their consideration. In view of these circumstances the Supreme Court should, in line with previous cases, assume that the state court passed on petitioner's

allegations of deprivation of federal constitutional rights and that these rights are open for review by the Supreme Court. See *Grygor* v. *Burke*, 68 S. Ct. 1256, 334 US 728, 92 L. Ed. 1683, rehearing denied 69 S. Ct. 13, 335 US 837, 93 L. Ed.; *Townsend* v. *Burke*, 68 S. Ct. 1252, 334 US 736, 92 L. Ed. 1690.

Proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute "due process of law." Whatever difficulties may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction both over the person and over the subject matter. See *Pennoyer* v. *Neff*, 95 U.S. 733, 24 L. Ed. 565; *Scott* v. *McNeal*, 14 S. Ct. 1108, 154 US 46, 38 L. Ed. 896; *Central of Georgia R. Co.* v. *Macon*, 110 F. 865; *Charles* v. *Marion* 98 F. 166; *Twining* v. *New Jersey* 211 US 78, 29 S. Ct. 14, 53 L. Ed. 97; *Owl Association* v. *McDonough* 204 US 8, 27 S. Ct. 236, 51 L. Ed. 345; *Hovey* v. *Elliot* 167 US 409, 17 S. Ct. 841, 42 L. Ed. 215; *Hammond Packing Co.* v. *Arkansas* 212 US 343, 351, 29 S. Ct. 370, 53 L. Ed. 530.

B. **The District Court of the County of Jefferson, Colorado never acquired jurisdiction of the subject matter.**

This action was governed by Colorado Revised Statutes, 1953, Chapter 58, Section 1, sub-section 4:

> "Any person shall be deemed and held guilty of an unlawful detention of real property in the following cases: . . . When such tenant, or lessee, holds over, without permission of his landlord, after any default in the payment of rent pursuant to the agreement under which he or she holds, *and three days notice, in writing, has been duly served upon the tenant, or lessee, holding over, requiring, in the alternative, the payment of the rent or the possession of the premises.* . . . ." (Emphasis supplied)

Indeed the lease in question (App. D p. A 21) stipulates that the said statute should govern:

> "IT IS UNDERSTOOD AND AGREED that. . . . in the event he (lessee) shall hold over after any such forfeiture, *be deemed guilty of an unlawful detainer and subject to eviction under the statute.*" (Emphasis supplied)

The Colorado courts never acquired jurisdiction because the notice required by statute was never given. The Colorado cases on this subject have unequivocally maintained that notice is imperative in such an action of forcible entry and detainer, and no notice in conformity with the hereinabove referred to Colorado statute was ever given to the petitioner. (App. D p. A 21)

In *Doss* v. *Craig*, 1 Colo. 177, the Supreme Court clearly expressed its views, in the following language:

> "In order to maintain a suit under the act it is absolutely and essentially necessary that the plaintiff shall have first made a demand in writing for the delivery of the premises in question. Until this is done, he can have no relief under the statute. This being the law, it was the duty of the plaintiff,

> if such demand was made, to set it out in his petition as a substantial fact, as required under section 11 of the act. A party cannot be guilty of wrongful detainer until after this demand has been made upon him. Nor was it cured by the verdict. It is of so important a character in this proceeding that no judgment could be rightly rendered against defendant unless it was alleged in the petition, or the absence of it expressly waived."

In *Farncomb* v. *Stern*, 18 Colo. 279, 32 P. 612, the Court distinguished the Doss case, but reaffirmed the rule expressed therein.

The Supreme Court of Oregon, commenting on *Doss* v. *Craig*, made this statement in *Wolver* v. *Hurst*, 82 P. 20, 47 Ore. 156, at page 22:

> "The cases are numerous where, considering the statutes giving the remedy, the notice is deemed and held to be a part of the procedure, and the action cannot be maintained, *nor the Court acquire jurisdiction in the premises*, until it is given in fact, and it is therefore insusceptible of waiver. Such is the case of Doss v. Craig, 1 Colo. 177, where a demand was absolutely and essentially necessary to a maintenance of the action." (Emphasis Supplied)

The case of *Miller* v. *Sparks*, 4 Colo. 303 illustrates sharply the law of demand and notice to quit. There the plaintiff made demand when none was necessary, and the defendant failed to make demand when one was required. *Miller* v. *Sparks* was explained in *Miller* v. *Colorado Springs*, 3 Colo. App. 309, 33 P. 74.

> "It simply holds that where no prior demand is necessary to be averred, it need not be proven. It would be surplusage, because the other facts set forth in the complaint would show that it is immaterial. But in a case in which a prior demand is required, it must be made and pleaded."

Let it also be noted that jurisdiction of the subject matter, unlike jurisdiction of the parties, cannot be

waived or conferred by consent of the parties. See *Julian* v. *People*, 67 Colo. 152, 186 P. 714.

C. **The Supreme Court of the State of Colorado incorrectly found that the petitioner paid the judgment voluntarily.**

The Supreme Court of Colorado found that Salter voluntarily paid the judgment. There was no evidence to substantiate such a finding. If anything, there was only evidence to the contrary. (See Appendix D p. A 22 & 23. Excerpt from page 16 of the Reply Brief of the Plaintiff in Error and a copy of the check therefor.)

It is true that it is a general rule that the decision of a state court upon a question of fact ordinarily cannot be made the subject of inquiry in the Supreme Court. See. *K. & T. Ry. Co.* v. *Haber*, 18 S. Ct. 488, 169 US 613, 639, 42 L. Ed. 878. But as was said in *Northern Pacific Ry. Co.* v. *North Dakota*, 35 S. Ct. 429, 236 US 585, 593, 59 L. Ed. 735:

> "To this general rule there are two equally well settled exceptions: (1) where a federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the federal question, to analyze the facts."

The check (Appendix D p. A 23) shows on its face that it was paid under protest, the affidavit (Appendix D p. 22) bears out the same conclusion. And yet without any evidence the Supreme Court of Colorado finds that the judgment was paid voluntarily. The doctrine of the Northern Pacific Railroad Company case allows this Honorable Court to review those findings because due process will be denied as the result of this finding which has no evidence to support it.

D. The Supreme Court of the State of Colorado incorrectly allowed the passage of time to influence their decision.

The Supreme Court of Colorado in the case of William J. Salter et. al. vs. The Board of Commissioners of County of Jefferson, State of Colorado, et. al. 292 P. 2d 345, allowed the passage of time to influence its decision (Appendix A p. A 13). Such was contrary to the law. The time element is immaterial because no rule of court can give the court jurisdiction and the parties cannot by their own maneuverings acquire jurisdiction for the court, nor can the court have jurisdiction where, in fact, there is no jurisdiction, and any rulings made without jurisdiction are valueless. This is true in all cases. The matter herein is not a technical right but a substantive right and a matter which could not be waived, and the defendant herein insists upon his rights, as was declared in *Julian* v. *People, supra:*

> "The cases cited involved waivers of technical rights where no question was raised as to jurisdiction, and hence are not in point. The court was without jurisdiction, and that fact may be shown at any stage of the case. * * *"

It is urged that as the result of the procedure followed by the Colorado courts the petitioner was deprived of his property without due process of law. The judgment was entered against him by the court which was totally without jurisdiction for the reason that a statute of the state had not been complied with, which was a prerequisite to the courts obtaining jurisdiction over the subject matter.

Petitioner herefore submits that where a State court obviously commits error and the decision of that court is unfair and in violation of the Constitution of the United States, a review should be granted by this Court in order that the Constitution right presented may be

correctly determined in accord with the applicable decisions of this court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

WESLEY E. MCDONALD
1025 Vermont Ave., N.W.
Washington, D. C.

CHARLES S. VIGIL
Ernest & Crammer Bldg.
Denver, Colorado
Counsel for Petitioners.

APPENDIX A

OPINIONS BELOW

The opinion of the trial judge rendering a verdict against the defendant in the case of Board of County Commissioners, of the County of Jefferson, State of Colorado, et. al. vs. William J. Salter, et. al. dated December 21, 1953, in C. A. #5904, is to be found on Page 28 of the Brief of the Plaintiff's in Error, page 19 of the record.

WILLIAM J. SALTER, et al.
Plaintiffs in Error

No. 17395

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO, et. al.

Defendant in Error

OPINION

Judgment Affirmed.

PER CURIAM

No. 17774

WILLIAM J. SALTER and SKY RANCHES SOCIETY, a Colorado Corporation,
Plaintiffs in Error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO,

Defendant in Error,

JEFFERSON COUNTY FAIR ASSOCIATION,
Intervenor.

Error to the District Court of Jefferson County
Honorable Osmer E. Smith, Judge

EN BANC WRIT OF ERROR DISMISSED

Mr. Charles S. Vigil,
Attorney for Plaintiffs in Error.

Mr. Wm. Hedges Robinson, Jr.
Attorney for Defendant in Error.

MR. JUSTICE KNAUSS delivered the opinion of the Court.

On May 19, 1947 the Board of County Commissioners, hereinafter referred to as the County, filed an ejectment action in the District Court of Jefferson County, Colorado against Salter, who had entered into possession of County land under a lease and option dated July 19, 1943. Judgment and decree in this action was entered December 21, 1953 in favor of the County, and Salter sued out a writ of error. On November 29, 1954 this court affirmed the judgment. *Salter* v. *Board of County Commissioners*, 130 Colo. 504, 277 P. (2d) 232. On January 16, 1955 Salter paid the judgment against him for the use and occupance of the land and the property was surrendered to the County.

On May 20, 1955 Salter filed in the trial court his "Motion to Dismiss and Vacate Judgment" which motion was denied on June 15, 1955. Salter seeks a review of this ruling by writ of error.

In sum, Salter by this motion claimed that the form of the former action was improper. His counsel in the instant proceeding did not appear for him in the former litigation which culminated on November 29, 1954, in affirmance by this court of the judgment of the district court.

Can a judgment debtor who has voluntarily paid the judgment and complied with its provisions come into the trial court five months after the judgment has been satisfied and nineteen months after the entry of the final judgment and have the judgment vacated? The answer to this question is obviously no. Such defendant has no standing in court.

When a defendant voluntarily pays a judgment he is barred from questioning any technicalities, either of pleading or form, incident to the entry of the judgment. A motion to vacate judgment "must be filed within a reasonable time," Rule 60 (b) R.C.P. Colo. We held in *Fiant* v. *Town of Naturita*, 127 Colo. 571, 259 P. (2d) 278 that a motion filed seven months after entry of judgment was filed too late.

Bull v. *Doss Bros. Elec. Construction Co.* 51 Colo. 459, 119 Pac. 156 was a case where plaintiff recovered a judgment and filed a transcript thereof as a lien. Defendant paid the judgment in order that he might deal with his real property. He sought a writ of error. It was there held that payment of the judgment left nothing for the court to determine, hence the appellate proceedings were dismissed. The court will not give its opinion on moot questions or abstract propositions. *Knowles* v. *Harrington*, 45 Colo. 346, 101 Pac. 403; *Lehrman Mercantile Co.* v. *Ireland*, 93 Colo. 209, 24 P. (2d) 750; *Hawthorne* v. *Hendrie & Bolthoff Mfg. & Supply Co.* 50 Colo. 342, 116 Pac. 122.

The ruling on the motion to "dismiss and vacate" was not a final judgment from which a writ of error will lie. *Fiant* v. *Town of Naturita, supra.*

The matters involved in this litigation have long since been determined; Salter has satisfied the judgment entered against him, and his belated effort to reopen the case in unavailing. There must be an end to litigation,

and after a judgment has been satisfied the judgment debtor is in no position to challenge it, or to experiment with additional legal theories advanced by new counsel employed by him. Cases cannot be submitted piecemeal. All issues on which a party to litigation may rely must be submitted in the original cause and the trial court given an opportunity to rule thereon. Failing to raise such matters in the trial of a cause, the litigant must be deemed to have waived them.

The writ of error is dismissed.

Mr. Justice Holland and Mr. Justice Moore not participating.

APPENDIX B

JUDGMENTS AND ORDERS

WHEREUPON, and on the said twenty-third day of January, A. D. 1956, the following proceedings were had and entered of record, to wit:

WILLIAM J. SALTER and SKY RANCHES SOCIETY, a Colorado Corporation
Plaintiffs in Error

17774 vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO

Defendants in Error

Error to the District Court of Jefferson County

This cause having been brought to this Court by writ of error to review the judgment of the District Court of Jefferson County, and having been heretofore argued by counsel and submitted to the consideration and judgment of the Court upon the matters assigned as constitut-

ing error in the proceedings and judgment of said District Court, and it now appearing to the Court that the writ of error herein should be dismissed.

It is therefore ordered that the same be, and it hereby is dismissed.

That thereafter and on the sixth day of February, A.D. 1956, the following proceedings were had and entered of record, to-wit: William J. Salter, et al,

Plaintiffs in Error

17774

vs.

The Board of COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO,
Defendant in Error.

Error to the District Court of Jefferson County.

The Court having considered the motion of the plaintiffs in error for a rehearing in said cause, and being sufficiently advised in the premises, it is this day ordered that said motion be, and the same hereby is denied.

IN THE
SUPREME COURT OF THE UNITED STATES

No. ———

October Term, 1955

WILLIAM J. SALTER and SKY RANCHES SOCIETY,
A Colorado Corporation
Petitioners

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO
Respondent

ORDER EXENDING TIME FOR FILING PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for the petitioner, it is ORDERED that the time for filing the petition for a writ of certiorari in the above-entitled cause, be and the same is hereby extended to and including May 23, 1956.

/s/ Tom Clark
Associate Justice of the
Supreme Court

Dated this 19th day of April, 1956.

APPENDIX C

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Code, Title 28, Sec. 1257, page 4183:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
> . . .
>
> (3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the United States."

Article XIV, Section 1 of the Constitution of the United States of America:

> ". . . nor shall any State deprive any person of life liberty, or property, without due process of law."

Colorado Revised Statutes Chapter 58, Section 4, Subsection 4th: "when such tenant, or lessee, holds over without permission of his landlord, after any default in the payment of rent pursuant to the agreement under which he or she holds, and three days' notice, in writing,

has been duly served upon the tenant, or lessee, holding over, requiring, in the alternative, the payment of the rent or the possession of the premises; provided, it shall not be necessary, in order to work a forfeiture of such agreement, for nonpayment of rent, to make a demand for such rent on the day on which the same becomes due; but a failure to pay such rent, upon demand, whenever made, shall work a forfeiture."

APPENDIX D

Excerpts from page 7, Brief of Plaintiffs in Error. (Rec. P. 19)

THIRDLY: Because of these neglectful oversights Salter was deprived of due process under the Constitution of the State of Colorado (Art. 11, Sec. 25) and of the United States of America. (U. S. Const., Amendment 14, Sec. 1).

Excerpt from pages 14-15, Brief of Plaintiffs in Error. (Rec. P. 19)

C 1. SALTER WAS ENTITLED TO FULL MEASURE OF JUSTICE REGARDLESS OF PERSONALITIES; AND PARTICULARLY WAS ENTITLED TO DUE PROCESS UNDER THE CONSTITUTION OF THE STATE OF COLORADO AND THE UNITED STATES OF AMERICA.

Due process must be given substance; and means substantial compliance with the laws. And our law will, I am sure, note that due process is more than a hollow phrase. (Section 1, Fourteenth Amendment, Constitution of the United States; Colo. Const. Art. II, Sec. 25).

And it is clear that this case under lease, under law and in justice under the Constitution of Colorado and the United States is an action in forcible detainer.

Rule 105 does not state that a person filing an action under that rule can disregard all prerequisite and necessary procedure under the statutes of Colorado necessary to be done before going into Court—so that Court can have jurisdiction.

Restated: it is necessary to give three days' notice of forfeiture and demand rent, or lease money *before* going into court.

Excerpt from page 15, Brief of Plaintiffs in Error. (Rec. P. 19)

C 2. NOTICE TO QUIT, PROPERLY SERVED IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS, IS A JURISDICTIONAL REQUIREMENT IN THIS STATE IN ACTIONS FOR THE RECOVERY OF REAL PROPERTY; AND IS PART OF DUE PROCESS WHICH CANNOT BE VARIED. SALTER WAS ENTITLED TO DUE PROCESS.

Due process, of course, requires that no person shall be deprived of his property or liberty without due process.

This is so under both the Constitution of Colorado and the United States of America.

Due process requires that the law relating to property rights be given full cognizance and enforcement equally and properly before the Courts.

Excerpts from page 11, Reply Brief of Plaintiffs in Error. (Rec. P. 20)

The cases cited by plaintiff are not in point. In those cases notice was not required, or was given. *They are not authority for the proposition that a landlord may evict a tenant for non-payment of rent without notice.*

Here there was no notice at all. The statute requires demand for rent or surrender of possession, it must be served in the manner prescribed by statute, it must be a three-day notice. Defendant never received *this notice.*

Rule 105 and the Forcible Detainer Statutes are not necessarily in conflict at any point, since Rule 105 is procedural after court action begins.

Since the matter of notice is a jurisdictional requirement, it must *be made before court action* and must be pleaded and proved in the court action.

Rule 105 says nothing regarding prerequisites to bringing suit.

It is clear that this case under lease, under law and in justice under the Constitutions of Colorado and the United States is an *action in forcible detainer.*

Excerpt from "Lease and Option", page 24, Brief of Plaintiffs in Error. (Rec. P.19)

IT IS UNDERSTOOD AND AGREED that failure of the Lessee to make any of the payments or to perform any of the conditions of the above lease shall constitute *a forfeiture thereof,* and that the Lessor shall, upon such forfeiture, have the right to terminate this lease and re-enter said premises and to dispossess the said Lessee, and said Lessee shall, in the event he shall hold over after any such forfeiture, be deemed guilty of an unlawful detainer *and subject to eviction under the statute.*

Excerpt from Page 2 of Brief of Plaintiffs in Error. (Rec. p. 19)

No statutory notice was served upon defendants and Court therefore has no jurisdiction over defendants and subject matter; and Complaint set forth no notice; none was alleged and none was proved.

Excerpt from pages 16-17, Reply Briefs of Plaintiffs in Error (Rec. P. 20)

APPENDIX A

WILLIAM J. SALTER and SKY RANCHES SOCIETY, a Colorado Corporation,
PLAINTIFFS IN ERROR,

VS.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, STATE OF COLORADO, DEFENDANT IN ERROR,

---

JEFFERSON COUNTY FAIR ASSOCIATION,
INTERVENOR.

AFFIDAVIT

COMES NOW William J. Salter, and being first duly sworn on oath deposes and says:

1. That he is the William J. Salter referred to in these proceedings and a party hereto.

2. That he paid the judgment referred to in the proceedings only because he was forced to do so by virtue of fact that Sheriff of Jefferson County, Colorado, was about to sell all the property which belonged to American Agricultural Research Foundation; that in order to save costs and expenses and trouble, William J. Salter paid the amount demanded by the Sheriff "under protest" as photostatic check attached hereto and made part hereof indicates.

3. That he, William J. Salter, would not have paid the amount demanded except for fear of consequences

and because of trouble saved thereby to American Agricultural Research Foundation, and he paid "under protest."

Respectfully submitted,

/s/ William J. Salter
William J. Salter

State of Colorado, City and County of Denver; ss.

Subscribed and sworn to before me this 10th day of November, 1955.

My commission expires .....

.....
Notary Public

Copy of check excerpted from page 17 of Reply Brief of Plaintiffs in Error. (Rec. p. 20)

23-94/1020

NORTH DENVER BANK

Denver, Colorado — January 5, —1955 No. .....
Pay to the
Order of *Clerk of the District Court* ——— $4,144.59
Four Thousand Dollars and one hundred fifty-nine cents

For CERTIFIED CHECK

DO NOT DESTROY /s/ Walter J. Salter

Paid under protest